IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.NO. 1025 /2004

PETITIONER

Arup Kumar Gupta, son of Late S.K. Gupta, age 50 years, R/o. Kudripara, Bankimogra, P.O. Bankimogra, District – Korba (Chhattisgarh)

VERSUS

RESPONDENTS

1. Union of India, through : Secretary (Law), Ministry of Law, Government of India, New Delhi.

2. Indian National Congress, through : Smt. S. Gandhi, M.P. & Leader Opposition, Parliament of India, Resident of 10, Janpath, New Delhi, Pin-110 011

3. Shri Ramadhar Kashyap, M. P. (Rajyasabha), Parliament of India, R/o. Tilak Nagar, Bilaspur, Chhattisgarh and R/o. 7, South Avenue, New Delhi.

Received copy
Shri Yadav
22-01-04
Clerk to
VINAY HARIT
Senior Central ...ding Counsel
CHHATTI...GH COURT

P.R. No. 2200/04
Presented by Shri Arup Kumar Gupta (Petitioner in person)
dated 22.01.04

पथ आयुक्त
एम. के. गुप्ता
बिलासपुर तहसील कोर्ट

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA, FOR ISSUANCE OF WRIT MANDAMUS, CERTIORARI, PROHIBITION AND / OR QUO WARRANTO AND / OR OTHER WRIT / ORDER / DIRECTION IN THE SAME NATURE IN THE CIRCUSMTANCES OF THE CASE.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

मामला क्रमांक W.P.NO.1025/ सन् 2004

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B: HON'BLE SHRI JUSTICE A.K.PATNAIK, C.J &
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, J.

22.08.2005

Heard Mr. Arup Kumar Gupta, Petitioner in person and Mr. S.K.Beriwal for respondent No.1.

This is a Public Interest Litigation filed by the petitioner. The petitioner has stated in his writ petition that respondent No.3-Ramadhar Kashyap belongs to the National Congress, respondent No.2. Respondent No.3 being a Member of Rajya Sabha (Member of Parliament) contested Assembly Elections from Akaltara Constituency on 01.12.2003 on the ticket of the respondent No.2. He was declared elected in the Assembly Elections from Akaltara Constituency. But without taking oath, he submitted his resignation from Council of the States and preferred to continue his membership in Parliament.

The aforesaid conduct of the respondent No.3 in contesting Assembly Elections from Akaltara Constituency and thereafter resigning and deciding to continue to be Member of Parliament has caused resentment amongst the people of Chhattisgarh. The petitioner has annexed to the writ petition excerpts from daily newspapers such as "Nav Bharat" and

(पीछे देखिये)

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"Tarun Chhattisgarh" to show the resentment in different sections of the society. The petitioner has alleged in the writ petition that the aforesaid conduct of the respondent No.3 sponsored by respondent No.2 is in defiance of the verdict of the people and shows that the respondents No.2 & 3 have no respect for the rule of law and the Constitution of India. The petitioner has therefore prayed inter alia that appropriate directions be given by a writ of mandamus, certiorari, prohibition and quo warranto and other writ.

Mr. Arup Kumar Gupta, (the petitioner) submitted that it will be clear from the provisions of Sections 68, 69 and 70 of the Representation of the Peoples Act, 1951 (hereinafter referred to as the Act) that a person cannot be a Member of two Houses of either the Parliament or the State Legislature. He submitted that the intention of the Legislature in making the said provisions of Representation of People Act, 1951 is that a person can not contest the Assembly Elections while he is a Member of a house of Parliament and if a person has contested the Assembly Elections and has got elected, he should resign from the house of the Parliament.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित – 3–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	On reading of Section 68 of the Representation of the People Act 1951, we find that the said Sections relates to vacation of seats when some person is elected to both Houses of Parliament and does not apply to the facts of this case. Section 69 of the Representation of the People Act 1951 relates to a case where a person is already a Member of one House of Parliament and is elected to another House of Parliament and also is not attracted to the facts of the present case. Section 70 provides that if a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State, then unless within the prescribed time he resigns from all but one of the seats (by writing under his hand addressed to the Speaker or Chairman, as the case may be, or to such other authority or officer as may be prescribed), all the seats shall become vacant. Hence, what the said Section 70 provides is that a person can contest an election if he is already a Member of one House but if he contests the election and gets elected, he must resign from one of the seats held by him in the two houses within the stipulated time or else both the seats will become vacant. In the present case, as admitted in the writ	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

petition, although the respondent No.3 was a Member of Rajya Sabha, he contested the elections from the Assembly Constituency of Akaltara but soon after getting elected, he submitted his resignation from the said Assembly seat. There was therefore, no violation of Section 70 of the Act.

Regarding resentment of the people against such practice of respondent No.3 of contesting from the Assembly Seat and thereafter resigning from the Assembly seat, no provision in the Representation of the People Act 1951 has been brought to our notice which prohibits the respondent No.3 from doing so. It is true as has been stated by the petitioner in the writ petition that contest for the Assembly Seat by respondent No.3 has led to unnecessary wastage of public expenses in the election of respondent No.3, but this is a matter which the legislature must consider and it is not for the Court to direct the respondent No.1 to amend the law accordingly.

The Representation of the People Act, 1951 is, as per settled law, a Special Act relating to elections to the Assembly and the Parliament and the said Act provides for specific remedies. We are afraid we cannot redress the aforesaid

(पीछे देखिये)

आदेश पत्रक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	grievance of the petitioner in the present writ petition under Article 226/227 of the Constitution of India. With the aforesaid observations, this writ petition stands disposed of. Sd/- Chief Justice Sd/- Dilip Raosaheb Deshmukh Judge	

(पीछे देखिये)